

**DRAFT DIRECTIVE TRANSMITTAL**  
**WORKFORCE SERVICES**

Number: WSDD-48

Date: September 2, 2010

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: WIA STATEWIDE WAIVERS AND EXTENSION OF STATE PLAN  
FOR PY 2010-11

☒ **IMMEDIATE ACTION**

Bring this draft to the attention of the appropriate staff.

☒ **E-MAIL COPY TRANSMITTED**

Number of pages (including coversheet): 20

If there are any problems with this transmittal, please call the Pagemaster at 916/654-8008.

**SUBJECT MATTER HIGHLIGHTS:**

The purpose of this directive is to convey the policy and procedural information pertaining to the extension of six statewide waivers and the approval of two new waivers granted to the State of California under the Workforce Investment Act (WIA) of 1998.

Additionally, it announces the extension of the State's Strategic Plan through June 30, 2011.

**COMMENTS ARE DUE BY:**

**9/17/10**

Comments can be submitted through one of the following ways:

- 1) **Fax** — WSD, Attention: **Marc Stockton** at 916/654-9753
- 2) **E-Mail** — [Marc.Stockton@edd.ca.gov](mailto:Marc.Stockton@edd.ca.gov) (Include "draft comments" in the subject line)
- 3) **Mail** — WSD / P.O. Box 826880 / MIC 69 / Sacramento, CA 94280-0001

All comments received by the end of the comment period will be considered before the final directive is issued. The Workforce Services Branch does not respond individually to each comment received. However, a summary of comments will be released with the final directive. **Comments received after the specified due date will not be considered.**

If you have any questions, contact the Workforce Services Division at (916) 654-7799.

# DRAFT DIRECTIVE

## WORKFORCE SERVICES

Number:

Date:

69:168:ab:13831

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: WIA STATEWIDE WAIVERS AND EXTENSION OF STATE PLAN FOR  
PY 2010-11

### EXECUTIVE SUMMARY:

#### Purpose:

The purpose of this directive is to convey the policy and procedural information pertaining to the extension of six statewide waivers and the approval of two new waivers granted to the State of California under the Workforce Investment Act (WIA) of 1998.

Additionally, it announces the extension of the State's Strategic Plan through June 30, 2011.

#### Scope:

This directive applies to all 49 Local Workforce Investment Areas (local area) and all other recipients of WIA funds.

#### Effective Date:

This directive is effective upon release.

### REFERENCES:

- WIA Sections 101(8)(C), 101(31)(B), 122(c), 133(b)(4), 134(a)(1)(A), 134(a)(3)(A)(iv), 136(b) and 189(i)(4)
- Title 20 Code of Federal Regulations (Title 20 CFR) Sections 661.420, 663.530, 664.510 and 667.140
- Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 30-09, Layoff Aversion Definition and the Appropriate Use of WIA Funds for Incumbent Worker Training (IWT) for Layoff Aversion Using a Waiver (June 8, 2010)
- DOL TEGL 26-09, WIA Waiver Policy and Waiver Decisions for Program Year (PY) 2009 and 2010 (May 12, 2010)

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- DOL TEGL 14-08, Guidance for Implementation of the WIA and Wagner-Peyser Act Funding in the American Recovery and Reinvestment Act (ARRA) of 2009 and State Planning Requirements for PY 2009 (March 18, 2009)
- DOL TEGL 17-05, Common Measures Policy for the Employment and Training Administration's Performance Accountability System and Related Performance Issues (February 17, 2006)
- California's Strategic Two-Year Plan for Title I of the WIA of 1998, and the Wagner-Peyser Act (July 1, 2009)
- Workforce Services Draft Directive WSDD-44, Transfer of Funds for WIA Adult and Dislocated Worker Programs (August 25, 2010)
- WIA Directive WIAD06-15, Eligible Training Provider List (ETPL) (February 7, 2007)

### **STATE-IMPOSED REQUIREMENTS:**

This directive contains some State-imposed requirements. These requirements are indicated by ***bold, italic*** type.

### **FILING INSTRUCTIONS:**

This directive supersedes Workforce Services Directive WSD09-14, dated March 4, 2010. Retain this directive until further notice.

### **BACKGROUND:**

On June 30, 2010, the DOL granted California approval of its request to extend its Strategic State Plan, six existing waivers, and two new waivers through June 30, 2011.

The six existing waivers include:

- The waiver of the prohibition to use Individual Training Accounts (ITA) for older and out-of-school youth at Title 20 CFR 664.510.
- The waiver of the time limit on the period of initial eligibility of training providers at Title 20 CFR 663.530.
- The waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.
- The waiver of WIA Section 134(a) to permit local areas to use a portion of local funds for IWT.
- The waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C).
- The waiver of WIA Section 133(b)(4) to increase the allowable transfer amount between adult and dislocated worker funding streams allocated to a local area.

The two new waivers include:

- The waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training.
- The waiver of WIA Section 134(a)(1)(A) to permit a portion of the funds reserved for rapid response activities to be used for IWT. These waivers were approved through June 30, 2011.

## **POLICY AND PROCEDURES:**

### **Extended Waivers**

#### **Individual Training Accounts**

The DOL granted California an extension of the waiver of the prohibition at 20 CFR 664.510 on the use of ITAs for older and out-of-school youth program participants. This waiver is granted through June 30, 2011. Under this waiver, local areas can use ITAs for older and out-of-school youth program participants. Local areas must ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth and where appropriate, counted toward the 30 percent out-of-school expenditure requirement.

This waiver assists local areas in maximizing the service delivery capacity of WIA youth programs within the One-Stop Career Centers by allowing youth who are determined not to follow an academic track, and are instead focused on employment, to have the same advantages of ITAs as adults and dislocated workers.

This waiver applies to both WIA and ARRA formula funds.

#### **Eligibility of Training Providers**

The DOL granted California an extension of the waiver that suspends the subsequent eligibility certification requirements of WIA Section 122(c). This waiver is granted through June 30, 2011. Under this waiver, the State is allowed to postpone the determination of subsequent eligibility of training providers. Additionally, this waiver allows the State to provide an opportunity for training providers to re-enroll and be considered enrolled as eligible providers.

This waiver encourages broader participation on the ETPL and minimizes the management burden for the local areas.

This waiver applies to both WIA and ARRA formula funds.

### **Common Measures**

The DOL granted California an extension of the waiver that allows the State to replace the 17 performance measures under WIA Section 136(b) with the DOL Common Measures. This waiver is granted through June 30, 2011. Under this waiver, the local areas no longer report on the following WIA measures: WIA adult and dislocated worker credential rates; participant and employer customer satisfaction; older youth measures;

and younger youth measures. For further information regarding the DOL Common Performance Measures, please refer to TEGL 17-05, "Common Measures Policy for the Employment and Training Administration's Performance Accountability System and Related Performance Issues."

This waiver applies to both WIA and ARRA formula funds.

### **Use of Local Funds for Incumbent Worker Training Activities**

The DOL granted California an extension of the waiver from the provisions of WIA Section 134(a) to permit local areas to use a portion of local funds for IWT. This waiver is granted through June 30, 2011. Under this waiver, local boards may use up to 10 percent of their adult funds and up to 10 percent of their dislocated worker funds for IWT only as part of a lay-off aversion strategy. Local areas are restricted to serving low-income adults with adult funds, and all training delivered is restricted to skill attainment activities.

***Notification from local areas that they intend to use up to 10 percent of their PY 2010-11 adult and/or dislocated worker funds for IWT must be received in writing by the Employment Development Department's (EDD) Workforce Services Division Central Office. Requests should be addressed to the local area's Regional Advisor and should be submitted 30 days in advance of the expected start date.***

***Local areas must track by funding stream the WIA funds used for IWT under this waiver. Any amount used for IWT is to be noted in the "Comments" section of the appropriate financial report. Please note that the local area's administrative, fiscal, and program activities will be subject to the State's monitoring processes.***

For additional policy and guidance related to implementation of this waiver, refer to [TEGL 26-09](#), "WIA Waiver Policy and Waiver Decisions for PY 2009 and 2010," Section 7A and [TEGL 30-09](#), "Layoff Aversion Definition and the Appropriate Use of WIA Funds for IWT for Layoff Aversion Using a Waiver," and the section, "New Waiver, Use of Rapid Response Funds to Conduct IWT," of this directive.

This waiver applies to both WIA and ARRA formula funds.

### **Customized Training**

The DOL granted California an extension of the waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C). This waiver is granted through June 30, 2011. This waiver permits the use of a sliding scale for the employer contribution based on the size of the business. Under this waiver, the following sliding scale is permitted: (1) no less than a 10 percent match for employers with 50 or fewer employees; (2) no less than a 25 percent match for employers with 51 – 250 employees; and (3) no less than a 50 percent match for employers with more than 250 employees. No request process is required for local areas to implement the employer match sliding scale.

When determining the funding source for customized training, local areas must use the appropriate program funds for the appropriate WIA eligible population. Local areas may provide customized training to low-income adults with WIA Adult funds, and to dislocated workers with WIA Dislocated Worker funds. Customized training provided with statewide funds must serve WIA eligible individuals.

This waiver provides a valuable tool to local boards in their support of California's small businesses and their employees. The sliding scale for employer match provides the necessary flexibility for small businesses to participate in the WIA customized training program. Accordingly, the intent of this waiver is to encourage greater employer participation which will lead to increased employment rates for skilled job seekers.

This waiver applies to both WIA and ARRA formula funds.

### **Transferability of Adult and Dislocated Worker Formula Funds**

The DOL granted California an extension of the waiver to permit an increase of the funds transfer limitation at WIA Section 133(b)(4). This waiver is granted through June 30, 2011. Under this waiver, local boards may transfer up to 50 percent of the Adult funds and up to 50 percent of the Dislocated Worker funds allocated to the local area between the Adult and Dislocated Worker funding streams. This transfer limit provides the local areas flexibility while ensuring consistency with the Congressional intent regarding the level of funding appropriated for WIA Adult and Dislocated Worker programs. This waiver does not apply to funds made available through the ARRA. However, the State is permitted to transfer up to 30 percent of ARRA funds between programs under WIA and under the DOL Appropriations Act of 2009.

***The local boards must submit transfer requests in writing to the appropriate Regional Advisor.*** For policies and procedures regarding the transfer of funds, please refer to [WSDD-44](#), "Transfer of Funds for WIA Adult and Dislocated Worker Programs."

### **New Waivers**

#### **Increase in Employer Reimbursement for On-the-Job Training**

The DOL granted California a waiver of WIA Section 101(31)(B) to permit an increase in employer reimbursement for on-the-job training through a sliding scale based on the size of the business. This waiver is granted through June 30, 2011. Under this waiver, the following reimbursement amounts are permitted: (1) up to 90 percent for employers with 50 or fewer employees, (2) up to 75 percent for employers with 51 – 250 employees, and (3) up to 50 percent reimbursement for employers with more than 250 employees. Local areas may provide on-the-job training to low-income adults with WIA Adult funds, and on-the-job training to dislocated workers with WIA Dislocated Worker funds. On-the-job training provided with statewide funds must serve WIA eligible individuals.

This waiver allows the local boards to encourage and expand the hiring of unemployed adult and dislocated workers who lack some of the skills needed to meet an employer's needs.



This waiver applies to both WIA and ARRA formula funds.

### **Use of Rapid Response Funds to Conduct Incumbent Worker Training Activities**

The DOL granted California a waiver of WIA Section 134(a)(1)(A) to permit a portion of Rapid Response (RR) funds to be used for IWT activities. This waiver is granted through June 30, 2011. Under this waiver, local boards may use up to 20 percent of RR funds for IWT only as part of a lay-off aversion strategy. All training delivered under this waiver is restricted to skill attainment activities. This waiver applies to funds made available through the WIA only. It does not apply to ARRA funds.

In addition to the guidance provided in TEGL 26-09, "WIA Waiver Policy and Waiver Decisions for PY 2009 and 2010," Section 7A and TEGL 30-09, "Layoff Aversion Definition and the Appropriate Use of WIA Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver," local areas may use the following general guidelines and suggestions to document their determination that the provision of IWT was appropriate.

#### **Identification of Employers with the Potential for Lay-offs:**

- Referral or contact from local city or county economic development agencies, chambers of commerce, labor organizations, small business development agencies, or other entities.
- Through connection with employers in a proactive and regular manner to identify their business needs.
- Through strong relationships with business management and labor representatives to encourage businesses to approach local areas before lay-offs.
- Use commercial business credit information such as [Dun and Bradstreet](#).
- Identification of rapidly transitioning industries using the EDD [Labor Market Information Division](#) (LMID) reports, regional industry sector studies, academic studies, or other credible data information sources.

#### **Identification of Workers in need of Training:**

- Use the [Worker Adjustment and Retraining Notification Act](#) as a way to identify not only workers currently in need of assistance, but to also identify workers who may need training in a struggling business in the future.
- Through regional and local collaborative efforts among local areas, employers, industry organizations, education and training institutions, labor organizations, community advocates, academic institutions, and other partners focused on addressing the workforce challenges of rapidly transitioning industries.
- Surveys and studies conducted by organizations or intermediaries such as the National Institute of Standards and Technology [Manufacturing Extension Partnership](#) may help to identify specific skill sets workers will need in order to remain employed.

- Data from other organizations including chambers of commerce, Small Business Development Centers, labor organizations, and surveys and studies commissioned by local areas.

#### **Identification of Incumbent Worker Training Needs within Industries:**

- Identify new or changing regulations that require a change in technology, software, waste reduction, energy conservation, etc.
- Identify changing skill requirements as a result of external economic or market forces, significant changes in operating processes, rapidly changing industry or occupational job requirements or emergence of new products.
- Direct communication with employers or joint labor-management committees such as joint apprenticeship training committees.
- Use of industry recognized skills standards and curriculum.
- Use the EDD LMID or other credible data industry projections to identify industry trends.

#### **ACTION:**

Implementation of these two new waivers could affect locally established policies and procedures. If programmatic changes occur, local areas may need to include them in their PY 2010-11 Local Plan Modifications.

Please bring this directive to the attention of all relevant parties.

#### **INQUIRIES:**

If you have any questions, please contact your [Regional Advisor](#) at (916) 654-7799.

MICHAEL EVASHENK, Chief  
Workforce Services Division

Attachment





**JUN 30 2010**

The Honorable Arnold Schwarzenegger  
Governor of California  
State Capitol Building  
Sacramento, California 95814

Dear Governor Schwarzenegger:

This letter provides approval of an extension of California's current Workforce Investment Act (WIA) and Wagner-Peyser Act (W-P) State Plan and waivers for Program Year (PY) 2010. This letter also responds to California's request for two new waivers.

Training and Employment Guidance Letter (TEGL) No. 21-09, issued on April 15, 2010, provides guidance for states to secure approval of their WIA/W-P State Plans and waivers for PY 2010, and included the option to receive an extension of the existing State Plan and waivers for an additional year without submitting a formal request.

#### Extension of State Plan

California's existing State Plan will expire on June 30, 2010. This letter constitutes a written determination under WIA Section 112 (29 USC 2822) that the Employment and Training Administration (ETA) is extending the approval of California's State Plan for WIA Title I and the Wagner-Peyser Act for Program Year 2010, July 1, 2010 through June 30, 2011.

The Grant Officer will issue a Notice of Obligation for the "July portion" of the WIA formula allocations for Adult and Dislocated Worker programs, effective July 1, 2010, under the PY 2010 Annual Funding Agreement. The W-P programs annual funding agreement for PY 2010/Fiscal Year 2011 will be sent to the designated state grantee agency for signature and return to the Grant Officer for execution, effective July 1, 2010. The W-P annual funding agreement will provide for the initial base allocation of PY 2010 funds.

#### Performance Levels

The Regional Administrator's letter advising the State of the PY 2010 WIA and W-P final performance goals constitutes a modification to the State Plan. ETA will incorporate California's final performance goals for PY 2010 into the Regional and National Office copies of the State Plan. Please include these final PY 2010 goals in the State's official copy of the State Plan.

## Waivers

As part of the State's extension of the WIA/W-P State Plan, and as described in TEGL 21-09, ETA has made determinations regarding an extension of California's PY 2009 waivers of statutory and regulatory requirements under WIA for PY 2010. The State also submitted a request for two new waivers (copy enclosed). The State's request for these waivers is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c). The disposition of the State's waiver extensions as well as its submission of new waiver requests is outlined below. This action is taken under the Secretary's authority at WIA section 189(i) to waive certain requirements of WIA title I, Subtitles B and E, and sections 8-10 of the Wagner-Peyser Act. Unless otherwise indicated, all waiver approvals that follow apply to both WIA formula funds and funds made available under the American Recovery and Reinvestment Act of 2009.

### Extension of Waivers

#### Waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts for older and out-of-school youth.

The State was previously granted a waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts (ITAs) for older and out-of-school youth program participants. The State is granted an extension of this waiver through June 30, 2011. Under this waiver, the State can use ITAs for older and out-of-school youth program participants. The State should ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth.

#### Waiver of the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.

The State was previously granted a waiver of the time limit on the period of initial eligibility of training providers provided at 20 CFR 663.530. The State is granted an extension of this waiver through June 30, 2011. Under the waiver, the State is allowed to postpone the determination of subsequent eligibility of training providers. The waiver also allows the State to provide an opportunity for training providers to re-enroll and be considered enrolled as initially eligible providers.

#### Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.

The State was previously granted a waiver that allows the State to replace the 17 performance measures under WIA Section 136(b) with the common measures. The State is granted an extension of this waiver through June 30, 2011. This waiver permits the State to negotiate and report WIA outcomes against the common performance

measures only, rather than the performance measures described at WIA Section 136(b). The State will no longer negotiate and report to ETA on the following WIA measures: WIA adult and dislocated worker credential rates; participant and employer customer satisfaction; older youth measures; and younger youth measures. The State will use the three adult common performance measures to negotiate goals and report outcomes for the WIA Adult and WIA Dislocated Worker programs. The State will use the three youth common performance measures to negotiate goals and report outcomes for the WIA Youth program. The Workforce Investment Act Standardized Record Data system (WIASRD) item 619, Type of Recognized Credential, should be completed for each individual as appropriate, regardless of this waiver to report on common performance measure outcomes only.

Waiver of WIA Section 134(a) to permit local areas to use a portion of local funds for incumbent worker training.

The State was previously granted a waiver to permit local areas to conduct allowable statewide activities as defined under WIA section 134(a)(3) with local WIA formula funding, specifically incumbent worker training. The State is granted an extension of this waiver through June 30, 2011. Under this waiver, the State will be permitted to allow local areas to use up to 10 percent of local Dislocated Worker funds and up to 10 percent of local Adult funds for incumbent worker training only as part of a lay-off aversion strategy. Use of Adult funds must be restricted to serving lower income adults under this waiver. ETA believes limiting incumbent worker training to the specified level and requiring it to be a part of layoff aversion is the best use of funds in the current economic climate where serving unemployed workers is a paramount responsibility of the workforce system. All training delivered under this waiver is restricted to skill attainment activities. Local areas must continue to conduct the required local employment and training activities at WIA section 134(d), and the State is required to report performance outcomes for any individual served under this waiver in the WIASRD, field 309. TEGL No. 26-09, Section 7A, "Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010" and TEGL No. 30-09, "Layoff Aversion Definition and the Appropriate Use of Incumbent Worker Training for Layoff Aversion Using Waivered Funds" provide policy guidance related to implementation of this waiver.

Waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C).

The State was previously granted a waiver of the required 50 percent employer contribution for customized training to permit the use of a sliding scale for the employer contribution based on the size of the business. The State is granted an extension of this waiver through June 30, 2011. Under the waiver, the following sliding scale is permitted: 1) no less than 10 percent match for employers with 50 or

fewer employees, and 2) no less than 25 percent match for employers with 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent contribution) continue to apply. When determining the funding source for customized training, the State must use the appropriate program funds for the appropriate WIA-eligible population. The State may provide customized training to low-income adults with WIA Adult funds, and may provide customized training to dislocated workers with WIA Dislocated Worker funds. Customized training provided with statewide funds must serve WIA eligible individuals.

Waiver of WIA Section 133(b)(4) to increase the allowable transfer amount between Adult and Dislocated Worker funding streams allocated to a local area.

The State was previously granted a waiver to permit an increase in the amount a state is allowed to transfer between the Adult and Dislocated Worker funding streams. The State is granted an extension of this waiver through June 30, 2011. Under the waiver, transfer authority is limited to 50 percent. This limitation provides states flexibility while ensuring consistency with Congressional intent regarding the level of funding appropriated for the WIA Adult and Dislocated Worker programs. As stated in TEGL No. 14-08, Section 19, issued on March 18, 2009, this waiver does not apply to funds made available through the American Recovery and Reinvestment Act of 2009. However, the State is permitted to transfer up to 30 percent of ARRA funds between programs under WIA and under the Department of Labor Appropriations Act of 2009. This authority is discussed in TEGL No. 14-08, change 1.

New Waiver Requests

Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training.

The State is requesting a waiver to permit an increase in employer reimbursement for on-the-job training through a sliding scale based on the size of the business. The State is granted this waiver through June 30, 2011. Under the waiver, the following reimbursement amounts will be permitted: 1) up to 90 percent for employers with 50 or fewer employees, and 2) up to 75 percent for employers with 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent reimbursement) will continue to apply. When determining the funding source for on-the-job training, the State must use the appropriate program funds for the appropriate WIA-eligible population. The State may provide on-the-job training to low-income adults with WIA Adult funds, and may provide on-the-job training to dislocated workers with WIA Dislocated Worker funds. On-the-job training provided with statewide funds must serve WIA eligible individuals.

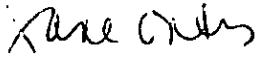
Waiver of WIA Section 134(a)(1)(A) to permit a portion of the funds reserved for rapid response activities to be used for incumbent worker training.

The State is requesting a waiver to permit use of rapid response funds to conduct allowable statewide activities as defined under WIA section 134(a)(3), specifically incumbent worker training. The State is granted this waiver through June 30, 2011. Under this waiver, the State is permitted to use up to 20 percent of rapid response funds for incumbent worker training only as part of a lay-off aversion strategy. ETA believes limiting incumbent worker training to layoff aversion is the best use of funds in the current economic climate where serving unemployed workers is a paramount responsibility of the workforce system. All training delivered under this waiver is restricted to skill attainment activities. The State is required to report performance outcomes for any incumbent workers served under this waiver in WIASRD field 309. TEGL No. 26-09, Section 7A, "Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010" and TEGL No. 30-09, "Layoff Aversion Definition and the Appropriate Use of Incumbent Worker Training for Layoff Aversion Using Waivered Funds" provide policy guidance related to implementation of this waiver. ETA Training and Employment Guidance Letter No. 14-08, Section 19, issued on March 18, 2009, explained that in order to apply this waiver to funds made available through the American Recovery and Reinvestment Act of 2009, states needed to submit a detailed justification. Because record numbers of unemployed individuals continue to seek the services of the workforce system, ETA believes that the use of Recovery Act funds for incumbent worker training would be inappropriate, and these funds should be devoted to serving those participants without jobs. Therefore, this waiver does not apply to funds made available through the American Recovery and Reinvestment Act of 2009.

The approved waivers are incorporated by reference into the State's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and this constitutes a modification of the State Plan. A copy of this letter should be filed with the State's WIA Grant Agreement and the approved State Plan. In addition, as required by TEGL No. 14-00, Change 3, the State should address the impact these waivers have had on the State's performance in the WIA annual performance report, due on October 1 of each year.

We look forward to working together as you implement your State Plan for PY 2010. If you have any questions related to the issues discussed above, please contact Robert Lanter, the Federal Project Officer for California, at (415) 625-7936 and [Lanter.Robert@dol.gov](mailto:Lanter.Robert@dol.gov).

Sincerely,



Jane Oates  
Assistant Secretary

Enclosure

cc: Victoria Bradshaw, Secretary, Labor & Workforce Development Agency  
Pam Harris, Acting Director, Employment Development Department  
Richard Trigg, Regional Administrator, ETA San Francisco Regional Office  
Janet Sten, Federal Coordinator for Plan Review and Approval  
Thomas Martin, Grant Officer  
Robert Lanter, Federal Project Officer for California

**STATE OF CALIFORNIA  
WORKFORCE INVESTMENT ACT (WIA)  
WAIVER REQUEST**

**Waiver to Permit Up to 90 Percent Reimbursement for  
On-the-Job-Training**

The California Workforce Investment Board (State Board) and the Employment Development Department, as the administrative entity of the WIA, submit this request for a waiver to permit up to 90 percent reimbursement for on-the-job-training.

In keeping with the guidelines set forth at WIA Section 189(i)(4)(B) and 20 Code of Federal Regulations (CFR) Part 661.420(c), please accept the following as a request for waiver.

The State Board respectfully requests a waiver to allow the State to reimburse up to 90 percent of employer cost for on-the-job-training.

**A. Statutory or Regulatory Requirements to be Waived**

Section 101(31)(B) of the Workforce Investment Act

**B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted**

The purpose of this waiver is to increase flexibility for the use of WIA formula and American Recovery and Reinvestment Act (ARRA) funds by permitting up to 90 percent reimbursement of the extraordinary costs of on-the-job training. Reimbursement would be provided on a sliding scale based on employer size: up to 90% for employers with 50 or fewer employees; up to 75% for employers with 51 to 250 employees; for employers with 251 or more employees, reimbursement would remain at the 50% statutory level.

The waiver will allow the State to encourage and expand the hiring of unemployed adult and dislocated workers who lack some of the skills needed to meet an employer's needs. It will provide them with opportunities to add new skill sets and learn new technologies while they return to the workplace and earn wages to support themselves and their families.

It will also:

- Maximize the flexibility needed to create on-the-job-training opportunities in the private and non-private sectors that provide appropriate skill acquisition opportunities for participants.
- Increase business usage of the workforce system and provide greater incentives for them to hire new workers.



- Attract a larger number of high quality, high wage jobs that create economic wealth for the various regions within the State.

California has one of the highest unemployment rates in the nation. This waiver will help businesses solve workforce challenges, such as attracting and retaining well qualified workers.

### **C. State or Local Statutory or Regulatory Barriers**

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

### **D. Description of Individuals Impacted by the Waiver**

Adult and Dislocated workers and other hard to serve populations with the greatest barriers to employment who are not already skilled enough to obtain available employment and would most benefit from being able to earn a wage while learning new skills; employers with full-time job openings in growth industries who are having difficulties finding appropriately skilled workers but would have the ability to provide on-the-job-training if assisted with the extraordinary costs of providing such training.

### **E. Opportunity for Public Comment and the Process for Monitoring Implementation of the Waiver**

As with all other major policy and procedural decisions made by the State, we rely heavily upon input from local partners. The potential impediments and benefits of being granted this waiver were discussed with local partners to gain input on those areas. Due to the level of expediency required to request this waiver, it was posted on the State Board's website for seven days seeking public comments. No comments were received in response to this request.

The CWIB and the EDD, as the administrative entity of the WIA in California, will monitor all reimbursed on-the-job-training. The State's current monitoring policy/procedures will be modified as necessary ensure compliance with the intent of the waiver.

**STATE OF CALIFORNIA  
WORKFORCE INVESTMENT ACT (WIA)  
WAIVER REQUEST**

**Use of Rapid Response Funding for Incumbent Worker Training**

The California Workforce Investment Board (State Board) and the Employment Development Department (EDD), as the administrative entity of the Workforce Investment Act (WIA) in California, submit this request for a waiver of the restrictions on the use of both regular and American Recovery and Reinvestment Act (ARRA) Rapid Response funding for Incumbent Worker Training at the Local Workforce Investment Area (Local Area) level. (A definition of incumbent worker is under development. The State Board will approve one before this waiver becomes operational.) This waiver would allow Local Workforce Investment Boards (Local Boards), at their discretion, to use Rapid Response funding of Local Area regular and ARRA funds for adults and dislocated workers [WIA Section 133(b)] to provide statewide employment and training activities identified at WIA Section 134 and 20 CFR 667.130, specifically to carry out Incumbent Worker Training programs for layoff aversion at the Local Area level. This waiver will apply to Program Year 2009 and subsequent years.

In keeping with the guidelines set forth at WIA Section 189(i)(4)(b) and 20 CFR Part 661.420(c) please accept the following as a request for a waiver.

**A. Statutory or Regulatory Requirements to be Waived**

The State of California requests a waiver from the provisions of WIA Sections 134 (Use of Funds for Employment and Training Activities), as well as a waiver from the provisions of WIA regulation at 20 CFR 665.300 regarding the use of WIA Rapid Response funds.

**B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted**

California has the largest labor market in the United States. In 2008, nonfarm payrolls totaled 14,994,100 jobs, comprising 10.9 percent of the nation's nonfarm jobs. In addition, California had 390,900 jobs in the farm sector for a total of 15,385,000 jobs in 2008. In the second quarter of 2009, the California economy was gripped by a severe recession characterized by deepening job losses and rapidly rising unemployment. California's economic problems originated in the housing and financial sectors, spread into the consumer economy, and subsequently into the rest of the economy. Unemployment is highest in low skill occupations. Mass layoff events have increased. Job losses are expected to continue into 2010.

Investing public resources to support technical and/or soft skills training of incumbent workers is a practical layoff aversion strategy for the state. It retains good jobs in California's targeted sectors. These identified (targeted) industry sectors play a key role in the state's economic success. The State Workforce Investment Board (State Board) in collaboration with the Economy Strategy Panel continues to invest in the development and implementation of the Regional Economies Project Industry Clusters of Opportunity Methodology (ICM). This economic analysis identifies on a regional basis, those industries that are emerging and those that are critical to the economic competitiveness of California's economy, which may require intervention to ensure viability for the long term. To further this effort, the State Board has awarded grants to assist existing regional collaboratives, or the formation of new regional partnerships to use the ICM to establish sector strategies, targeting those industries and its employees, identified through the regional data analysis.

The application of this ICM framework, assures that funds used for incumbent worker training, benefit the employee and employer, as well as improve the region's economic vitality. The continued use of other existing methods such as WARN Notices will also complement the use of ICM. This waiver also provides the Local Board with greater flexibility in the use of WIA Rapid Response funds to participate in the regional collaborative and leverage the full capability of the system's resources and not be constrained by the silos typically associated with WIA funding streams.

Additionally, the plan for incumbent worker training, as part of California's layoff aversion strategy, will target industries and economic sectors, which offer high skill and high wage jobs. One of these sectors is the green economic sector. California has a long-standing history of leading implementation of environmental policy. Most recently, the enactment of the California Global Warming Solutions Act (AB32) and the Alternative and Renewable Fuel and Vehicle Technology Program (AB118) have demonstrated that California is becoming a national and global leader in combining advances in public policy and private sector innovation to enhance both environmental quality and economic growth. In addition, the Governor signed the Green Collar Jobs Act, establishing the Green Collar Jobs Council (GCJC) under the State Workforce Investment Board and directing the development of a statewide sector strategy targeting the emerging Green economy.

The types of training that will be provided include occupational skills training designed to meet the special requirements of a business and is conducted with employer commitment to continue to retain all trained individuals upon successful completion of the training, educational training, training in strategies to improve efficiency of business operations, and computer software training. Training is expected to provide skills, which result in the employer being able to adjust to a changing economic climate by providing the jobs necessary to do so, thus averting layoffs. Training is also expected to provide skills for employees, which will permit advancement to higher skilled, higher paying jobs and job retention.

The IWT layoff aversion strategy will continue to be coordinated with other existing services accessible through One Stop Career Centers throughout California and will help to ensure to the extent possible a maximum return of investment as the 49 Local Areas that comprise California's workforce system continue to face a wide range of distinct economic challenges due largely to the national economic downturn which in California, like many other states has resulted in excessively high unemployment.

Criteria will be established to identify appropriate uses of incumbent worker training. Employers will be selected where economic indicators demonstrate a need for incumbent worker training as part of a layoff aversion strategy. Such indicators may include announced layoffs or reduced work schedules. An analysis will be performed to ensure the training provides the employees with the skills necessary to enable the employer to maintain operations and avert layoffs, or even closure. Employers will be required to demonstrate a commitment to retain the employee, to pay the employee a higher wage or otherwise provide a tangible benefit to the employee.

California's workforce system is comprised of 49 Local Workforce Investment Areas which are independently locally operated by a Local Workforce Investment Board. As such, the local areas have a large degree of flexibility to develop programs and deliver services that best address the unique needs of the local labor market. Because of their connection with the employer community, staff at the local level is in the best position to identify opportunities for utilizing the IWT service strategy and for developing appropriate criteria for implementing the IWT layoff aversion strategy together with Rapid Response and other economic development strategies.

#### **C. State or Local Statutory or Regulatory Barriers**

There is no State or local statutory or regulatory barriers to implementing the proposed waiver.

#### **D. Description of Individuals Impacted by the Waiver**

This waiver plan will positively affect businesses by reducing the risk of layoff or closure because workers have not kept current with new skills and technologies. It also has the potential, as businesses expand due to the enhanced skills of their current workers, to stimulate new, lower-skill positions and to create openings in positions vacated by incumbent workers who receive skills upgrade training. The training provided to individuals will make them more valuable to current and future employers. This waiver plan increases the role Local Boards as workforce intermediary and the role of business in the workforce development system. It also increases local flexibility to respond to the business community, in keeping with the goals of the WIA.

#### **E. Opportunity for Public Comment and the Process for Monitoring Implementation of the Waiver**

This request was developed as a result of concerns expressed by Local Boards. The potential impediments and benefits of being granted this waiver were discussed with local partners to gain input on those areas. Due to the level of expediency required to request this waiver, it was posted on the State Board's website for seven days seeking public comments. No comments were received in response to this request.

The EDD, as the administrative entity of the WIA in California, will monitor all reimbursed on-the-job-training. The State's current monitoring policy/procedures will be modified as necessary ensure compliance with the intent of the waiver.